

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ACHATES REFERENCE PUBLISHING, INC.,

Plaintiff,

v.

SYMANTEC CORPORATION;
GLOBALSCAPE INC.; STARDOCK SYSTEMS
INC.; ELECTRONIC ARTS, INC.;
QUICKOFFICE, INC.; SOLARWINDS INC.; and
APPLE INC.,

Defendants.

C.A. No. 2:11-cv-294-JRG-RSP

**DEFENDANT ELECTRONIC ARTS INC.'S RESPONSE TO ACHATES REFERENCE
PUBLISHING INC.'S MOTION TO STAY PENDING
INTER PARTES REVIEW [DKT NO. 371]**

Defendant Electronic Arts Inc. ("EA") submits this response pursuant to the Court's April 5, 2013 Order (Dkt. No. 375.) In particular, the Court requested that each defendant indicate whether or not they "(1) agree[] to be held to the same estoppel as will apply against Apple resulting from the *inter partes review*, and (2) agree[] that the estoppel will apply as soon as the PTO issues an appealable determination."

EA does not agree to be bound by the outcome of Apple's *inter parties review* or to otherwise be estopped based on those proceedings ("IPR"). EA will not agree to be held to the same estoppel as will apply against Apple resulting from the *inter partes* review. Since EA does not agree to be bound by the same estoppel as may apply to Apple resulting from the IPR proceedings, EA takes no position as to whether the estoppel to parties agreeing to be so bound would apply as soon as the USPTO issues an appealable determination. EA is not supportive of the request for stay and wishes to proceed to trial. The reasons for EA's refusal to be bound are,

stated in pertinent part, as follows:

- EA did not participate in the preparation of or the decision to file the petition for *inter partes* review of the patents-in-suit filed by Apple, did not receive notice of the petitions until Apple had filed them, and is not a party to Apple's IPR;
- EA's understanding is that the estoppel provisions of the statute governing IPR proceedings are broad, and EA intends to rely on several other prior art patents and publications that are not included in the IPR in support of its own invalidity defenses. If bound by the results of Apple's *inter partes review*, EA would likely be estopped from addressing these different prior art references in this litigation; and
- EA believes any possible efficiencies of a stay are outweighed by possible prejudice as EA may be estopped from bringing its invalidity case in any forum.

Accordingly, EA does not support a stay in this case and respectfully requests that the Court deny Plaintiff's Motion to Stay with respect to EA to permit EA to fully litigate its case against the Plaintiff.

Respectfully submitted,

Date: April 10, 2013

By: /s/ Karineh Khachatourian
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**ATTORNEYS FOR DEFENDANT
ELECTRONIC ARTS INC.**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 10th day of April, 2013, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Karineh Khachatourian
Karineh Khachatourian

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